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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,478	11/13/2003	Judy Lynn Westby	STL 8646	2370
27367 7590 02/02/2007 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			EXAMINER DU, THUAN N	
			ART UNIT 2116	PAPER NUMBER
			MAIL DATE 02/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.



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CENTRAL REEXAMINATION UNIT

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In re Application of	:	
Westby et al.	:	
Application No. 10/714,478	:	ORDER TO
Filed: November 13, 2003	:	SHOW CAUSE
Attorney Docket No. STL 8646	:	(Remailed)

This is a show cause order based on the expiration of U.S. Patent No. 6,317,800, for which the present application requests reissue.

### BACKGROUND

1. The present application ("present reissue proceeding") was filed November 13, 2003, for reissue of U.S. Patent No. 6,317,800 (the '800 patent), which issued November 13, 2001.
2. A review of the Office's financial records for the '800 patent reveals that the 3.5 year maintenance fee due and not paid could have been paid during the period from November 15, 2004 (November 13, 2004 was a Saturday) through May 13, 2005, or with a surcharge during the period from May 16, 2005 (May 14, 2005 was a Saturday) through November 14, 2005 (November 13, 2005 was a Sunday). As a result, the '800 patent expired after midnight on November 13, 2005, for failure to pay the 3.5 year maintenance fee due. See 1302 *Official Gazette* 1232 (January 10, 2006).
3. On November 7, 2006, an Order to Show Cause was mailed, but was returned to the Office as undeliverable.
4. On February 1, 2007, in response to a telephone communication from Fred A. Silverberg, Senior Legal Advisor in the Office of Patent Legal Administration, a change of address was submitted by facsimile transmission.

### ORDER TO SHOW CAUSE

The following was pointed out in the original November 7, 2006, mailing of the Order to Show Cause: Since the '800 patent has expired for failure to pay the first maintenance fee, the Director of the USPTO no longer has the authority under 35 U.S.C. § 251 to reissue the '800 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only "for the unexpired part of the term of the original patent." Thus, **when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; Emphasis added]

Because the Director no longer has the authority under 35 U.S.C. § 251 to reissue the patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the application for reissue of the '800 patent to be an abandoned application. Applicants are being provided with a 30 day period from this mailing regardless of the fact that a 30 day period was previously provided in the November 7, 2006 mailing of the Order to Show cause in view of the equities of the particular facts involved.

### CONCLUSION

1. Applicants are hereby being provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding. If applicant proposes to show cause why the present reissue proceeding should not be terminated, applicant's showing must include an explanation of why the proceeding should continue in spite of the expiration of the original patent. If applicants make a showing, the showing will be evaluated as to whether it provides sufficient basis why the present reissue proceeding should not be terminated.
2. Failure to respond to this show cause order within the 30 day period that has been set will result in the proceedings being terminated by default. If the present reissue proceeding is terminated, jurisdiction over the application for reissue of the '800 patent will be returned to Technology Center 2116 for processing as an abandoned application.
3. Jurisdiction over the file for reissue application 10/714,478 is being retained in the Office of Patent Legal Administration (OPLA), pending a response by applicant, or the expiration of time for a response.
4. Telephone inquiries related to this decision should be directed to Fred Silverberg, Senior Legal Advisor, at (571) 272-7719 or, in his absence to Kenneth M. Schor, Senior Legal Advisor, at (571) 272-7710.

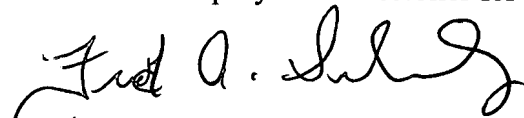


Kenneth M. Schor

Senior Legal Advisor

Office of Patent Legal Administration

Office of the Deputy Commissioner for Patent Examination Policy



Conferee: Fred A. Silverberg, Senior Legal Advisor